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Application Number 10/728,763

Filing Date 12/02/2003

First Named Inventor Martin Clive-Smith

Art Unit 3781

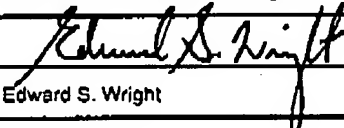
Examiner Name Harry A. Grosso

Attorney Docket Number A-70132-1

ENCLOSURES (Check all that apply)

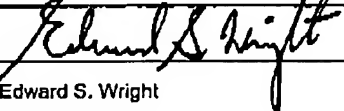
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A-70132-1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of:)	
)	Examiner: Harry A. Grosso
Martin Clive-Smith, et al.)	
)	Group Art Unit: 3781
Serial No. 10/726,763)	
)	Confirmation No. 4195
Filed: December 2, 2003)	
)	
For: ADJUSTABLE POST FOR)	
CONTAINER)	August 27, 2007

REPLY BRIEF

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Applicant responds as follows to the new points of argument made in the Examiner's Answer.

Wakano Does Not Teach the Use of Detents with Flat Bearing Surfaces

The Examiner is mistaken in saying that Wakano provides a teaching of the use of detents with flat face bearing surfaces. The elements (54, 74) characterized by the Examiner are not detents at all. They do not lock anything. They are simply plates with flat surfaces upon which stanchions (6, 10) rest. They do not pass through aligned openings in any post elements. Instead, they are slid into horizontal grooves (53) in the inner side walls of open-front stanchion supports (5, 7) and can be moved from groove to groove to change the height of the stanchions. They are in the nature of adjustable shelf brackets, not detents.

**Wakano Does Not Suggest the Use of a Detent with Flat Sides
in Place of the Round Detent Pins Shown in Betjemann**

The Examiner is likewise mistaken in arguing that it would be obvious to incorporate the flat plate of Wakano in Betjemann '326 by providing detent openings that correspond to the shape of the detent since that is the mode of operation of Betjemann '326. This argument is based on the false premise that Wakano teaches a detent with flat sides. As noted above, the elements characterized by the Examiner as detents in Wakano are not detents at all, but simply plates upon which the lower ends of stanchions rest. These plates are wider than the stanchions, and they extend into grooves in the side walls of the stanchion supports for support. If openings corresponding to these plates were cut in the stanchions and stanchion supports in Betjemann '326, they would sever the stanchions and weaken the stanchion supports to the point that they would probably break.

A fair combination of the teachings of Wakano and Betjemann would be the addition of the adjustable support plates of Wakano to the stanchion supports of Betjemann so that the stanchions can rest on them. Even that would require substantial modification of the

structure shown in Betjemann. Such modification would be far beyond the scope of obviousness, and moreover even if it were done, it would not produce the invention.

Motivation and General Knowledge

In arguing that motivation can be found in knowledge generally available to one of ordinary skill in the art, the Examiner makes the totally unsupported and erroneous argument that the use of a flat plate as a detent to spread stacking and lifting loads over a larger cross section of post elements would be knowledge generally available to one of ordinary skill in the art. That argument epitomizes the error in the Examiner's position. Having been unable to find such a teaching in the prior art, the Examiner now, for the first time, in his Answer, suggests that it would be "knowledge generally available to one of ordinary skill in the art." That, with all due respect, is outrageous.

It is well established that patent examiners relying on what they assert to general knowledge to negate patentability on the ground of obviousness must articulate that knowledge and place it of record. The factual question of motivation to select and combine references is material to patentability, and it cannot be resolved on subjective belief and unknown authority. *In re Lee*, 277 F.3d 1338, 1343 - 1344, 61 USPQ 2d 1430, 1433 - 1434 (Fed. Cir. 2002).

The Claims

Claim 20 and dependent Claims 21 - 22, 24 - 32, and 34 all distinguish over the teachings of the references in calling for a support post of adjustable length having first and second axially movable post elements with detent openings with opposing flat surfaces, and a detent having flat face bearing surfaces on opposite sides thereof for engagement with the flat surfaces of the detent openings in the post elements to hold the post elements in predetermined positions for both lifting and stacking loads. As discussed above and in applicant's Brief on Appeal, the references do not disclose or suggest an adjustable support post having detent openings with opposing flat surfaces and a detent having flat bearing

surfaces on opposite sides thereof for engagement with the flat surfaces of the detent openings to hold the post elements in different positions for both lifting and stacking loads.

Claim 35 is directed to a post of adjustable length for supporting both lifting and stacking loads on a freight container, and it distinguishes over the references in calling for a pair relatively movable post elements having index openings with opposing flat sides therein, and a detent having opposing flat surfaces engagable with the flat sides of the openings to retain the post elements in a predetermined position. As discussed above and in applicant's Brief on Appeal, the use of a detent opening and a detent with opposing flat sides or surfaces in an adjustable post for supporting both lifting and stacking loads is neither found in, nor remotely suggested by the references.

Claim 36 is directed to a support post having a first section mounted in a fixed position relative to a base and a second section which is axially extensible relative to the first section, and it distinguishes over the references in calling for apertures in the first and second sections with opposing flat surfaces for indexed mutual alignment when the second section is extended or retracted to predetermined positions, and a detent plate having opposing flat surfaces for insertion into the apertures to locate and retain sections in a predetermined position relative to each other. The references do not even remotely suggest apertures with opposing flat surfaces which are aligned with each other when one post section is in predetermined positions relative to the other, and a detent plate having opposing flat surfaces for insertion into the apertures.

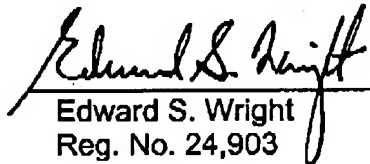
Claim 38 is directed to a support post for a container having an upstanding first section mounted in a fixed position and a second section which is axially extensible relative to the first section, and it distinguishes over the references in calling for laterally extending rectangular openings in the two sections which are aligned with each other when the second section is extended to a predetermined position, and a relatively flat detent pin of rectangular cross section which can be inserted into the aligned openings to hold the second section in the predetermined position. The references, taken alone or together, do

not teach or suggest laterally extending rectangular openings which are aligned with each other when the one post section is extended to a predetermined position relative to another, and a relatively flat detent pin of rectangular cross section which can be inserted into the aligned openings to hold the second section in the predetermined position.

SUMMARY AND CONCLUSION

It is once again respectfully submitted that the rejections which the Examiner has made cannot be sustained and that the action of the Examiner should be reversed.

Respectfully submitted,


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